

REMARKS/ARGUMENTS

This Amendment is being filed in response to the Office Action dated October 9, 2008 and the Notice of Non-Compliant Amendment of April 15, 2009. Reconsideration and allowance of the application in view of the amendments made above and the remarks to follow are respectfully requested.

Regarding the Notice of Non-Compliant Amendment of April 15, 2009, claims 48, 49 and 55 are corrected to properly reflect "New" in place of "Currently Amended" as requested. Further, the figure is corrected to indicate FIG. 1 and the specification is amended to reflect this change in the figure. It is respectfully submitted that the present Amendment is in proper form and addresses each of the issue raised in the Notice of Non-Compliant Amendment of April 15, 2009. Accordingly, entrance and consideration of the present Amendment is respectfully requested.

Claims 39-63 are pending in the Application. Claims 1-23 are canceled herein, without prejudice. The Applicants respectfully reserve the right to reintroduce subject matter deleted herein, either at a later time during the prosecution of this application or any continuing applications. Claims 39-63 are added by this

Amendment in Reply to Non-Final Office Action of October 9, 2008
and the Notice of Non-Compliant Amendment of April 15, 2009

amendment to provide the claimed subject matter in better conformance with U.S. practice.

By means of the present amendment, the Abstract has been deleted and substituted with the enclosed New Abstract which better conforms to U.S. practice.

In the Office Action, the drawings are objected to because FIG. 1 does not show details and labels as described in the specification. In response, a Replacement Sheet containing amended FIG. 1 is submitted herewith, in which descriptive labels have been included in the boxes of elements 12, 14, 16, 18, 20, 22, 24, 26, 28 and 30. Accordingly, withdrawal of the drawing objection is respectfully requested.

In the Office Action, the disclosure is objected to because the Abstract allegedly fails to set forth the nature and gist of the invention. Without agreeing with this objection, in the interest of advancing prosecution, by means of the present amendment, the current Abstract has been deleted and substituted with the enclosed New Abstract. Accordingly, withdrawal of this objection is requested.

In the Office Action, the Examiner notes suggested guidelines of a preferred layout for the specification. Although Applicants

gratefully acknowledge the Examiner's suggestion, Applicants respectfully decline to add the section headings as they are not required in accordance with MPEP §608.01(a).

In the Office Action, claims 12-23 are objected to for informalities with regard to the "arrangement" of claim 12 referring to the method of 1. The cancellation of claims 12-23 renders this objection moot. It is respectfully submitted that the new claims are in proper form. Accordingly, withdrawal of the claim objections is respectfully requested.

In the Office Action, claims 1-3, 5, 7-9, 11-12 and 13-23 are rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. The cancellation of claims 1-3, 5, 7-9, 11-12 and 13-23 renders this rejection moot. It is respectfully submitted that the new claims are in proper form. Accordingly, withdrawal of the rejections under 35 U.S.C. §112, second paragraph, is respectfully requested.

In the Office Action, claims 1-5 and 11-18 are rejected under 35 U.S.C. §102(b) over U.S. Patent No. 6,470,220 to Kraus ("Kraus"). In addition, claims 6-10 and 19-23 are rejected under 35 U.S.C. §103(a) over Kraus in view of DE19930408 to Hauger ("Hauger") or DE19624167 to Fercher ("Fercher"). It is respectfully submitted that the cancellation of the claims renders

these rejections of the claims moot. It is respectfully submitted that claims 39-63 are patentable over the cited art of record.

For instance, claims 39 and 50 are patentably distinct and patentable over Kraus for at least the following reasons.

Kraus shows a method for detecting and treating cancerous tumors. A magnetic material is administered to an individual, which contains substances that enable the magnetic material to attach to tumor cells. The magnetic material is then manipulated using a low frequency rotational field so that the magnetic material attached to the tumor cells undergoes a rotation to provide viscous heating of the tumor cells. (See e.g., Col. 3, lines 1-51 and Col. 18, lines 48-58).

In view of the above, claim 39 is patentable over Kraus as Krause does not disclose or suggest a method for examining an object which, amongst other patentable elements, comprises (illustrative emphasis provided) "detecting electromagnetic radiation from the irradiated target area . . . which is modulated by interaction with rotating or oscillating magnetic particles in the target area and determining at least one of an intensity, absorption and polarization of the detected electromagnetic radiation as a function of a change in rotation or oscillation of

the magnetic particles due to modulation of the detected electromagnetic radiation" as recited in claim 39.

Similarly, with regard to claim 50, Kraus does not disclose or suggest an apparatus for examining an object which, amongst other patentable elements, comprises (illustrative emphasis provided) "at least one detector for detecting electromagnetic radiation from the irradiated target area . . . which is modulated by interaction with magnetic particles in the target area and an evaluation unit for processing the detected radiation signals to determine at least one property of the detected electromagnetic radiation as modulated by interaction with the magnetic particles," as recited in claim 12.

Moreover, neither Hauger nor Fercher cure the deficiencies of Kraus as noted above with regard to claims 39 and 50. Accordingly, it is respectfully requested that independent claims 39 and 50 be allowed. In addition, it is respectfully submitted that dependent claims 40-49 and and 51-63 should also be allowed at least based on their dependence from claims 39 and 50, as well as the individually patentable elements recited in such dependent claims. Accordingly, separate consideration of each of the dependent claims is respectfully requested.

In the Office Action, claims 1-23 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of U.S. Patent No. 7,300,452. Moreover, claims 1-23 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 and 11-17 of a copending Application Serial No. 10/270,991. It is respectfully submitted that the cancellation of claims 1-23 renders this rejection of the claims moot.

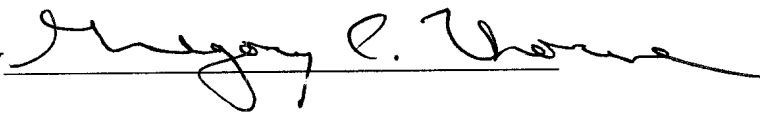
Indeed, claims 1-14 of U.S. Patent No. 7,300,452 and claims 1-8 and 11-17 of a copending Application Serial No. 10/270,991 do not include subject matter that is the same or similar to that recited in claims 39 and 50 (as noted above) regarding detection of reflected or scattered electromagnetic radiation from an irradiated target area and processing/evaluation the detected radiation signals to determine a property of the detected electromagnetic radiation as a function of the modulation of the detected signals due to interaction with the magnetic particles in the target area, as generally claimed in claims 39 and 50. Accordingly, withdrawal of the double patenting rejections is respectfully requested. It is

respectfully submitted that Applicants will consider filing a terminal disclaimer, if necessary in view of any allowable claims, upon indication that the present application is otherwise allowable or includes allowable claims.

In addition, Applicants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicants reserve the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

In view of the above, it is respectfully submitted that the present application is in condition for allowance, and a Notice of Allowance is earnestly solicited.

Respectfully submitted,

By 

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Enclosure: Replacement drawing sheet (1 sheet including FIG. 1)

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